

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALBERT FORD,

Plaintiff,

v.

JAMES BENDER, Deputy Commissioner of Correction; PETER ST. AMAND, Superintendent of MCI-Cedar Junction,

Defendants.

Civil Action No. 07-11457-JGD

PLAINTIFF'S MOTION IN LIMINE TO TAKE AND ADMIT PHOTOGRAPHIC EVIDENCE OF PRISON CONDITIONS IN THE DDU

Plaintiff Albert Ford moves *in limine* pursuant to Fed. R. Evid. 402 to take and have admitted into evidence photographs of the Departmental Disciplinary Unit (“DDU”) at the Massachusetts Correctional Institute at Cedar Junction (“MCI-Cedar Junction”) and also to show to the jury the shackles that are used to restrict him in the DDU. Mr. Ford specifically moves for an order (1) allowing a photographer (to be arranged by Mr. Ford and at his expense) access to the DDU on or before July 21 to take photographs of his cell, the door of his cell, the hallway outside of his cell, and a DDU exercise cage, and permitting those photographs be admitted at trial and (2) allowing him to be able to show the jury the shackles in which he is transported to court.¹

To assess Mr. Ford’s damages, the jury must evaluate the conditions of confinement in the DDU. *See Furtado v. Bishop*, 604 F.2d 80, 89 (1st Cir. 1979) (measure of damages for unlawful disciplinary segregation considered the “harsh[...] conditions suffered in segregation”).

¹ Mr. Ford has separately moved *in limine* to appear at trial without the shackles in which he is transported to court from the DDU.

Mr. Ford's damages may also include compensation for the physical and mental injuries he suffered as a result of his confinement in the DDU, and the conditions of that confinement bear directly on the nature of injury to Mr. Ford. *See Hendrickson v. Cooper*, 589 F.3d 887, 890-91 (7th Cir. 2009) (affirming jury award of compensatory damages for prisoner's pain and suffering in a § 1983 action); *McClary v. Coughlin*, 87 F. Supp. 2d 205 (W.D.N.Y. 2000), *aff'd* 237 F.3d 185 (2d Cir. 2001).

Photographs are typically admissible as evidence provided that they are relevant and a proper foundation is laid. Photographs provide an accurate means to convey to the jury conditions of confinement in the DDU. *Navarro de Cosme v. Hospital Pavia*, 922 F.2d 926, 931 (1st Cir. 1991). A proper foundation for the photographs can be laid by having Mr. Ford or a representative of the Department of Correction testify that the photographs are true and accurate representations of the DDU. Similarly, Mr. Ford can testify that the shackles in which he is transported to court for trial are the type of shackles that were used on him as a pretrial detainee in the DDU in 2007 and 2008. *See* Fed. R. Evid. 901(b)(1); Fed. R. Evid. 901(b)(8). There is also no risk of prejudice Defendants James Bender and Peter St. Amand, as the photographs and shackles would be a neutral representation of the conditions in which Mr. Ford was confined while imprisoned in the DDU.

For the reasons above, Plaintiff specifically moves for an order (1) allowing a photographer (to be arranged by Mr. Ford and at his expense) access to the DDU on or before July 21 to take photographs of his cell, the door of his cell, the hallway outside of his cell, and a

DDU exercise cage, and permitting those photographs be admitted at trial and (2) allowing him to be able to show the jury the shackles in which he is transported to court.

ALBERT FORD
By his attorneys,

/s/ Dimple Chaudhary
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Dated: July 5, 2011

CERTIFICATE OF SERVICE

On July 5, 2011, I caused a copy of the foregoing document to be served by electronic mail via the electronic filing system upon all counsel of record.

/s/ Dimple Chaudhary
Dimple Chaudhary, BBO # 674845